

ESTTA Tracking number: **ESTTA686424**

Filing date: **07/29/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	BBK Tobacco & Foods, LLP
Granted to Date of previous extension	09/09/2015
Address	3401 W Papago St Phoenix, AZ 85009 UNITED STATES
Correspondence information	BBK Tobacco & Foods, LLP 3401 W Papago St Phoenix, AZ 85009 UNITED STATES legal@hbiin.com Phone:602-955-6688

Applicant Information

Application No	86428623	Publication date	05/12/2015
Opposition Filing Date	07/29/2015	Opposition Period Ends	09/09/2015
Applicant	Pinkerton Tobacco Co. LP 1121 Industrial Drive Owensboro, KY 43201 UNITED STATES		

Goods/Services Affected by Opposition


Class 034. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: tobacco derived nicotine pouches

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3358723	Application Date	03/19/2007
Registration Date	12/25/2007	Foreign Priority Date	NONE
Word Mark	POUCH		

Design Mark	
Description of Mark	The mark consists of The word POUCH in a Kangaroo design.
Goods/Services	Class 034. First use: First Use: 2004/02/14 First Use In Commerce: 2004/02/22 Cigarette papers

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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Brendan N. Mahoney/
Name	BBK Tobacco & Foods, LLP
Date	07/29/2015

1. Opposer is the current owner of the following U.S. Patent and Trademark Office ("PTO") registrations for the following trademarks (collectively "Opposer's Registered Marks"):

Mark Class and Related Goods	Application Date Dates of First Use	Registration Number and Date
Pouch (Ser. No. 770134254 IC 034 G&S Cigarette Papers	Application March 19, 2007 First Use Feb. 22, 2004	3358723 December 25, 2007

2. Opposer uses, and has used, and continues to use Opposer's Registered Marks to identify the goods identified in the registrations for Opposer's Registered Marks.

3. Opposer itself, or through its predecessor, has used, Opposer's Registered Marks in U.S. interstate commerce for the sale of the goods identified in those registrations since 2007.

4. Opposer itself, or through its predecessor, has used, some of Opposer's Common Law Marks in U.S. interstate commerce for the sale of cigarette papers since as early as 2007.

5. Applicant is seeking to obtain, under the provisions of the Trademark Act of 1946, as amended, registration upon the Principal Register of Applicant's Mark.

6. Applicant's Mark was published for opposition in the Official Gazette of May 12, 2015.

7. Applicant's Mark contains word elements that are identical or closely similar to the Opposer's Registered Marks.

8. Applicant's Mark duplicates distinctive characteristics of the Opposer's Registered Marks.

9. Applicant's Mark creates an overall commercial impression identical to Opposer's Registered Marks.

10. Applicant's Mark is confusingly similar to Opposer's Registered Marks and.

11. Applicant's Mark is used in connection with the sale of goods that are related in some manner to goods that are identified in the PTO registrations for Opposer's Registered Marks and that are sold by Opposer using Opposer's Registered Marks such that the goods are likely to be encountered by the same persons under circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that they originate from the same source

12. Applicant's Mark creates the immediate and erroneous suggestion and impression that goods sold under Applicant's Mark are goods that originate with, are endorsed by, are compatible with, or are otherwise connected to Opposer.

13. Upon information and belief, the goods, identified in the application for Applicant's Mark, are and will be marketed under conditions such that they are likely to be encountered by the same purchasers of Opposer's goods, sold using Opposer's Registered Marks, and under circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that the goods originate from the same source.

14. Upon information and belief, the customers of and the channels of distribution employed by Opposer and Applicant are likely to be similar, even overlapping, adding to the likelihood that the goods sold by Applicant under Applicant's Mark will be confused with the Opposer's goods, sold using Opposer's Registered Marks.

15. Upon information and belief, the classes of purchasers to whom Opposer and Applicant will sell will be the same, adding to the likelihood that consumers intent on purchasing Opposer's goods sold using Opposer's Registered Marks will purchase Applicant's goods sold

under the Applicant's Mark under the mistaken impression that they originate with, are endorsed by, or are otherwise connected to Opposer.

16. The similar nature of the marks themselves, the related goods and the trade channels and customers for those goods are so great as to create a likelihood of confusion among consumers as to the source of Applicant's goods or Applicant's affiliation or relationship with, or sponsorship by, Opposer.

17. Such confusion resulting from Applicant's intended use and the requested registration of Applicant's Mark, will damage Opposer.

18. Applicant's Mark should be barred from registration, pursuant to 15 U.S.C. § 1052(d), because Applicant's Mark consists of a mark which so resembles Opposer's Registered Marks in use in U.S. interstate commerce, that Applicant's Mark is likely, when used on or in connection with the goods of the Applicant, to cause confusion, or to cause mistake, or to deceive.

19. WHEREFORE, Opposer requests that its Opposition be sustained, that the registration of Applicant's Mark be refused, and that Application Serial No. 86-428623 be rejected.

Dated this 29th day of July, 2015.

BBK TOBACCO & FOODS, LLP



Brendan N. Mahoney
General Counsel
3401 West Papago Street
Phoenix, AZ 850009

ATTORNEY FOR OPPOSER

CERTIFICATION

I certify that a copy of the foregoing Petition for Cancellation was sent this 29th day of July, 2015 via United States mail, postage prepaid, to:

Pinkerton Tobacco Co., LP
1121 Industrial Drive
Owensboro, KY 43201

Laura Goldbard George
Stroock & Stroock & Lavan LLP
180 Maiden Ln Fl 38
New York, NY 10038-4982

And courtesy copy via email to:
tm@stroock.com, lgoldbard@stroock.com



Brendan N. Mahoney